

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TAMMY RENEE SMART,

NO. C15-1689RSL

Plaintiff,

V.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

ORDER AFFIRMING
COMMISSIONER'S DECISION
AND DISMISSING CASE

Defendant.

Plaintiff Tammy Renee Smart appeals the final decision of the Commissioner of the Social Security Administration (“Commissioner”), which denied her application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-83f, after a hearing before an administrative law judge (“ALJ”). For the reasons set forth below, the Commissioner’s decision is **AFFIRMED**.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff is a 42-year-old woman with a GED. Administrative Record (“AR”) at 518, 527. Her past work experience was as a cashier and a mail sorter. AR at 523. Plaintiff was last gainfully employed in July of 2005. Id.

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Plaintiff protectively filed an application for SSI on July 29, 2008. AR at 13. Plaintiff asserted that she was disabled due to high blood pressure, osteoarthritis, anxiety, panic attacks, and back pain. AR at 522.

The Commissioner denied plaintiff's claim initially and on reconsideration. AR at 13. After two unfavorable decisions that were remanded by the Appeals Council, plaintiff had a third hearing that took place on March 3, 2015. AR at 13-14. On April 22, 2015, the ALJ issued a decision finding that plaintiff was not disabled based on his finding that plaintiff could perform specific jobs existing in significant numbers in the national economy. AR at 13-24. Plaintiff's request for review by the Appeals Council was denied on August 26, 2015 (AR at 1-7), making the ALJ's ruling the "final decision" of the Commissioner as that term is defined by 42 U.S.C. § 405(g). On October 27, 2015, plaintiff timely filed the present action challenging the Commissioner's decision. Dkt. No. 3.

II. STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits when the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. Bayliss v. Barnhart, 427 F.3d 1211, 1214 (9th Cir. 2005). "Substantial evidence" is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971); Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is

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susceptible to more than one rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

III. EVALUATING DISABILITY

As the claimant, Ms. Smart bears the burden of proving that she is disabled within the meaning of the Social Security Act (the “Act”). Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir. 1999). The Act defines disability as the “inability to engage in any substantial gainful activity” due to a physical or mental impairment which has lasted, or is expected to last, for a continuous period of not less than twelve months. 42 U.S.C. § 1382c(a)(3)(A). A claimant is disabled under the Act only if her impairments are of such severity that she is unable to do her previous work, and cannot, considering her age, education, and work experience, engage in any other substantial gainful activity existing in the national economy. 42 U.S.C. § 1382c(a)(3)(B); see also Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th Cir. 1999).

The Commissioner has established a five-step sequential evaluation process for determining whether a claimant is disabled within the meaning of the Act. See 20 C.F.R. § 416.920. The claimant bears the burden of proof during steps one through four. At step five, the burden shifts to the Commissioner. Id. If a claimant is found to be disabled at any step in the sequence, the inquiry ends without the need to consider subsequent steps. Step one asks whether the claimant is presently engaged in “substantial gainful activity.” 20 C.F.R. § 416.920(b).¹ If she is, disability benefits are denied. If she is not, the Commissioner proceeds to step two. At step two, the claimant must establish that she has one or more medically severe impairments, or combination of impairments, that limit her physical or mental ability to do

¹ Substantial gainful activity is work activity that is both substantial, *i.e.*, involves significant physical and/or mental activities, and gainful, *i.e.*, performed for profit. 20 C.F.R. § 416.910.

1 basic work activities. If the claimant does not have such impairments, she is not disabled. 20
 2 C.F.R. § 416.920(c). If the claimant does have a severe impairment, the Commissioner moves
 3 to step three to determine whether the impairment meets or equals any of the listed
 4 impairments described in the regulations. 20 C.F.R. § 416.920(d). A claimant whose
 5 impairment meets or equals one of the listings for the required twelve-month duration
 6 requirement is disabled. Id.

7 When the claimant's impairment neither meets nor equals one of the impairments listed
 8 in the regulations, the Commissioner must proceed to step four and evaluate the claimant's
 9 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). Here, the Commissioner
 10 evaluates the physical and mental demands of the claimant's past relevant work to determine
 11 whether she can still perform that work. 20 C.F.R. § 416.920(f). If the claimant is able to
 12 perform her past relevant work, she is not disabled; if the opposite is true, then the burden
 13 shifts to the Commissioner at step five to show that the claimant can perform other work that
 14 exists in significant numbers in the national economy, taking into consideration the claimant's
 15 RFC, age, education, and work experience. 20 C.F.R. § 416.920(g); Tackett, 180 F.3d at 1099,
 16 1100. If the Commissioner finds the claimant is unable to perform other work, then the
 17 claimant is found disabled and benefits may be awarded.

18 IV. DECISION BELOW

19 On April 22, 2015, the ALJ issued a decision finding the following:

- 20 1. The claimant has not engaged in substantial gainful activity since July
 1, 2008, the application date (20 C.F.R. § 416.971 *et seq.*).
- 21 2. The claimant has the following severe impairments: degenerative disc
 disease of the cervical and lumbar spine; anxiety; depression; obesity;
 right carpal tunnel syndrome; and history of substance abuse (20
 C.F.R. § 416.920(c)).

3. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. §§ 416.920(d), 416.925 and 416.926).
4. The claimant has the residual functional capacity to perform light work as defined in 20 C.F.R. § 416.967(b) except she is limited to standing and walking for one hour at a time, with rest for a few minutes while staying at the workplace throughout an eight-hour day. She can stand and walk for a total of four hours in an eight-hour workday. She can sit for one hour at a time, after which she must change position (but remain at the workplace); that could mean changing position while seated. She can sit a total of six hours in an eight-hour workday. She is capable of frequent reaching, handling, fingering, and feeling. She can perform occasional overhead reaching. She can never climb ropes, ladders, scaffolds. She cannot work at any height or near dangerous machinery. She can concentrate in two-hour increments with the usual customary breaks throughout an eight-hour workday. She can have no contact (except incidental contact) with the public. She can have telephone contact with the public without restriction. She can work in proximity with co-workers but not in coordination with them.
5. The claimant is unable to perform any past relevant work (20 C.F.R. § 416.965).
6. Considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform (20 C.F.R. §§ 416.969 and 416.969(a)).
7. The claimant has not been under a disability, as defined in the Social Security Act, since July 1, 2008, the date the application was filed (20 C.F.R. § 416.920(g)).

AR at 16-23.

V. ISSUE ON APPEAL

The issue on appeal is whether the ALJ erred in evaluating the medical evidence in the record. Dkt. 13 at 1.

1 VI. DISCUSSION

2 Plaintiff argues that the ALJ erred in evaluating the opinions of several medical
 3 professionals in the record. See Dkt. 13 at 3-16. The ALJ is responsible for determining
 4 credibility and resolving ambiguities and conflicts in the medical evidence. See Reddick v.
 5 Chater, 157 F.3d 715, 722 (9th Cir. 1998). In resolving questions of credibility and conflicts in
 6 the evidence, an ALJ's findings "must be supported by specific, cogent reasons." Id. at 725.
 7 The ALJ can do this "by setting out a detailed and thorough summary of the facts and
 8 conflicting clinical evidence, stating his interpretation thereof, and making findings." Id.

9 The ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted
 10 opinion of either a treating or examining physician. Lester v. Chater, 81 F.3d 821, 830 (9th Cir.
 11 1996). Even when a treating or examining physician's opinion is contradicted, that opinion
 12 "can only be rejected for specific and legitimate reasons that are supported by substantial
 13 evidence in the record." Id. at 830-31.

14 A. Examining Psychologist – Margaret Cunningham, Ph.D.

15 Plaintiff argues that the ALJ improperly discounted the opinion of examining
 16 psychologist Margaret Cunningham, Ph.D. See Dkt. 13 at 3-6. The Court disagrees.

17 Dr. Cunningham performed a psychological evaluation of plaintiff on October 30,
 18 2012. See AR at 951-63. Dr. Cunningham opined that plaintiff had marked to severe
 19 limitations in 13 areas of mental functioning, including making simple work-related decisions
 20 and performing routine tasks without supervision. See AR at 955. The ALJ gave this opinion
 21 little weight because, among other reasons, Dr. Cunningham's own findings were inconsistent
 22 with such profound restrictions. See AR at 22.

23 An ALJ need not accept the opinion of a physician if it is inadequately supported by
 24 clinical findings. See Batson v. Comm'r, Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir.

1 2004). Here, Dr. Cunningham performed a Mental Status Examination (“MSE”), on which
2 plaintiff scored 42 out of 50. See AR at 959. Plaintiff was able to successfully complete the
3 vast majority of tasks testing orientation, attention, language, following directions, and general
4 knowledge. See id. These normal findings were inconsistent with Dr. Cunningham’s ultimate
5 opinion. For example, Dr. Cunningham found that plaintiff would have marked limitations
6 following short and simple instructions, but plaintiff achieved a near-perfect score on the
7 “following directions” portion of the MSE. See AR at 955, 959. Dr. Cunningham nowhere else
8 explained why plaintiff would have such extreme limitations despite her performance on the
9 objective testing. See AR at 951-58. Therefore, the ALJ provided a specific and legitimate
10 reason supported by substantial evidence to discount Dr. Cunningham’s opinion and
11 incorporate mental restrictions into the RFC that were less extreme.

12 B. Examining Psychologists – Anselm Parlatore, Ph.D., and Holly Petaja, Ph.D.

13 Plaintiff argues that the ALJ erred in evaluating the opinions of examining
14 psychologists Anselm Parlatore, Ph.D., and Holly Petaja, Ph.D. See Dkt. 13 at 6-10. The Court
15 disagrees.

16 Dr. Parlatore performed a psychological evaluation of plaintiff on November 15, 2007.
17 See AR at 683-87. Dr. Parlatore opined that plaintiff was moderately to markedly impaired in
18 terms of stress, focus, concentration, pace, persistence, and her ability to carry out specific
19 tasks in a timely and consistent manner. See AR at 686. Dr. Petaja performed a psychological
20 evaluation of plaintiff on March 20, 2011. See AR at 906-14. Dr. Petaja opined that plaintiff
21 had marked difficulties with performing in a work setting with even limited public contact and
22 with maintaining appropriate behavior in a work setting, as well as moderate difficulties in
23 several other areas. See AR at 909.

The ALJ adopted the analysis found in the prior remanded decision of all medical opinions other than Dr. Cunningham's. See AR at 21. In the prior decision, the ALJ discounted the opinions of Dr. Parlatore and Dr. Petaja because, among other reasons, they were inconsistent with plaintiff's performance on MSEs. See AR at 254. An ALJ may discount the opinion of a physician where it is inconsistent with clinical findings or the medical record as a whole. See Batson, 359 F.3d at 1195. For example, plaintiff scored 29 out of 30 on the mini-MSE administered by Dr. Petaja, and Dr. Petaja observed normal orientation and thought processes, cooperative attitude, fair memory and concentration, and intact abstract reasoning. See AR at 911-13. As discussed above, plaintiff had similarly normal results on the MSE administered by Dr. Cunningham. See AR at 959. The results from these objective tests were inconsistent with limitations to which Dr. Parlatore and Dr. Petaja opined. Therefore, the ALJ gave a sufficient a reason to discount these opinions.

C. Consultative and Treating Physicians – Jerry Rusher, M.D., Franklin Bjorseth, M.D., Midori Larrabee, M.D., and Gary Schillhammer, M.D.

Plaintiff argues that the ALJ erred in evaluating the opinions of four physicians – Jerry Rusher, M.D., Franklin Bjorseth, M.D., Midori Larrabee, M.D., and Gary Schillhammer, M.D. – regarding plaintiff’s physical capabilities. See Dkt. 13 at 10-16. The Court disagrees.

These physicians each provided opinions about plaintiff's physical capabilities that found her to be limited in her ability to sit and stand, perform postural activities, lift, use her hands and arms, or walk without a cane. See AR at 676-82, 758-59, 892-904, 918-22.

The ALJ in the prior decision gave these physicians' opinions little weight because they were inconsistent with plaintiff's treatment history and the objective clinical findings in the record, which established that plaintiff was neurologically intact. See AR at 254. The record shows that plaintiff repeatedly exhibited normal range of motion, no motor weakness, intact

1 musculoskeletal functioning, and full strength in her extremities. See, e.g., AR at 660, 723,
2 737, 821, 979, 1007, 1049, 1170, 1202, 1235. Though plaintiff used a cane on occasion, she
3 was found to have a normal gait requiring no assistive devices at repeated visits to treatment
4 providers. See, e.g., AR at 1170, 1193, 1207, 1230, 1240. Also, an electromyogram showed
5 only mild to moderate carpal tunnel syndrome, and plaintiff repeatedly exhibited normal hand
6 and wrist strength. See, e.g., AR at 1112-13, 1202, 1220, 1231, 1240, 1254. Therefore,
7 substantial evidence supported the ALJ's decision to afford limited weight to the opinions of
8 the consultative and treating physicians who opined to greater physical limitations.

VII. CONCLUSION

10 For the foregoing reasons, the decision of the Commissioner is AFFIRMED. The Clerk
11 of Court is directed to enter judgment in favor of defendant and against plaintiff.

Dated this 24th day of May, 2016.

Robert S. Lasnik
Robert S. Lasnik
United States District Judge